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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. LAUREN PEREZ, Defendant and Appellant.	H043965 (Monterey County Super. Ct. No. SS160692A)

I. INTRODUCTION

In December 2014 defendant Lauren Perez pleaded guilty to two felony offenses: unlawfully driving or taking a vehicle (Veh. Code, § 10851, subd. (a); count 1) and buying or receiving a stolen motor vehicle (Pen. Code, § 496d, subd. (a);[1] count 2). Defendant admitted she had a prior conviction that qualified as a "strike" (§§ 667, subds. (b)-(i), 1170.12) and admitted that she had served a prior prison term (§ 667.5, subd. (b)). The trial court subsequently dismissed the strike allegation, struck the prior prison term allegation, suspended imposition of sentence, and placed defendant on probation for three years.

In August 2016, defendant filed a petition to redesignate both of her felony convictions as misdemeanors pursuant to section 1170.18, subdivision (f), which was enacted by Proposition 47, the Safe Neighborhoods and Schools Act. (Prop. 47, as

[1] All further statutory references are to the Penal Code unless otherwise indicated.

approved by voters, Gen. Elec. (Nov. 4, 2014), eff. Nov. 5, 2014.) The trial court denied the petition on the ground that neither conviction was eligible for redesignation as a misdemeanor under section 1170.18.

On appeal, defendant contends that the trial court erred in denying her petition as to both counts. She argues that although neither Vehicle Code section 10851 nor section 496d were offenses explicitly affected by Proposition 47, her convictions qualify for redesignation under various principles of statutory construction and equal protection. Acknowledging that she did not present evidence of the vehicle's value, defendant argues that the proper remedy is to either remand the matter for an evidentiary hearing or affirm the trial court's order without prejudice to the filing of a new petition. For the reasons stated below, we will affirm the trial court's order.

II. FACTUAL AND PROCEDURAL BACKGROUND

On October 21, 2014, the Orange County District Attorney's Office filed a felony complaint charging defendant with unlawfully driving or taking a vehicle (Veh. Code, § 10851, subd. (a); count 1) and buying or receiving a stolen motor vehicle (§ 496d, subd. (a); count 2). In both counts, the complaint specified that the vehicle was a 1995 Honda Accord. The complaint alleged that defendant had a prior burglary conviction that qualified as a "strike" (§§ 667, subds. (b)-(i), 1170.12) and that defendant had served a prior prison term (§ 667.5, subd. (b)).

On November 4, 2014, voters enacted Proposition 47, which reclassified certain drug- and theft-related offenses as misdemeanors instead of felonies or alternative felony misdemeanors. (See *People v. Shabazz* (2015) 237 Cal.App.4th 303, 308 (*Shabazz*); § 1170.18, subd. (a).) One statute amended by Proposition 47 was section 496, subdivision (a), which defines receiving stolen property and now specifies that "if the value of the property does not exceed nine hundred fifty dollars ($950), the offense shall be a misdemeanor, punishable only by imprisonment in a county jail not exceeding one year." (See *People v. Johnson* (2016) 1 Cal.App.5th 953, 959 (*Johnson*).) Proposition 47

also added a new statute, section 490.2, which generally defines petty theft as the theft of property valued at $950 or less. (§ 490.2, subd. (a); *Shabazz*, *supra*, at p. 308.) Proposition 47 did not amend Vehicle Code section 10851 or section 496d (the two offenses charged in defendant's case).

On December 8, 2014, defendant pleaded guilty to both substantive offenses—as felonies—and admitted the prior conviction and prior prison term allegation. As a factual basis for her plea, defendant wrote: "I willfully and unlawfully drove a 1995 Honda Accord without the owner's permission, knowing it was stolen, and with the intent to deprive the owner of the vehicle." On the same date, the trial court dismissed the strike allegation, struck the prior prison term allegation, suspended imposition of sentence, and placed defendant on probation.

In February 2016, the Orange County Probation Department filed a motion to transfer defendant's probation to Monterey County, pursuant to section 1203.9, subdivision (a), because defendant's permanent residence was in Monterey County. The Orange County Superior Court granted the motion and ordered the transfer in April 2016. The Monterey County Superior Court accepted the transfer in May 2016.

On August 8, 2016, defendant filed (in Monterey County Superior Court) a petition to redesignate both of her felony convictions as misdemeanors pursuant to section 1170.18, subdivision (f).[2] The Monterey County District Attorney filed opposition to the petition, stating three grounds: (1) the offenses were not eligible for redesignation; (2) the value of the property exceeded $950; and (3) the petition was filed

[2] In her petition, defendant indicated she was filing a petition for redesignation of her conviction pursuant to section 1170.18, subdivision (f) because she had completed her sentence. Nothing in the record indicates that defendant had completed her probation, however, and thus it appears she should have filed a petition for resentencing pursuant to section 1170.18, subdivision (a). (See *People v. Tidwell* (2016) 246 Cal.App.4th 212, 218-219.) This procedural distinction does not affect our analysis of the issues on appeal.

in the "wrong court"—i.e., it should have been filed in the Orange County Superior Court instead of the Monterey County Superior Court.[3]

At a hearing held on September 8, 2016, the trial court denied defendant's petition. At the hearing, the District Attorney conceded that defendant's petition was properly filed in Monterey County.[4] However, the District Attorney asserted that the petition should be denied because "neither charge . . . is available for the relief." The trial court agreed that both of defendant's convictions involved charges that were "not available for redesignation pursuant to [section] 1170.18."

III. DISCUSSION

A. Vehicle Code Section 10851(a)

Defendant contends that a conviction for violating Vehicle Code section 10851, subdivision (a) (hereafter, Vehicle Code section 10851(a)) may be resentenced or redesignated as misdemeanor petty theft pursuant to section 1170.18 under principles of statutory construction and equal protection.[5]

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[3] In support of his "wrong court" contention, the District Attorney cited *People v. Curry* (2016) 1 Cal.App.5th 1073, review granted Nov. 9, 2016, S237037. The Supreme Court subsequently granted review of that case and ordered briefing deferred pending its decision in *People v. Adelmann* (2016) 2 Cal.App.5th 1188, review granted Nov. 9, 2016, S237602, which presents the following issue: "If a case is transferred from one county to another for purposes of probation (Pen. Code, § 1203.9), must a Proposition 47 petition to recall sentence be filed in the court that entered the judgment of conviction or in the superior court of the receiving county?" (http://appellatecases.courtinfo.ca.gov/search/case/mainCaseScreen.cfm?dist=0&doc_id=2157718&doc_no=S237602.)

[4] Neither party raises this issue on appeal, and we therefore express no view on whether the petition was properly filed in Monterey County.

[5] The issue of whether a felony conviction under Vehicle Code section 10851(a) may be resentenced or redesignated as a misdemeanor under Proposition 47 is currently before the California Supreme Court. (See, e.g., *People v. Page* (2015) 241 Cal.App.4th 714, review granted Jan. 27, 2016, S230793; *People v. Haywood* (2015) 243 Cal.App.4th 515, review granted Mar. 9, 2016, S232250; *People v. Ortiz* (2016) 243 Cal.App.4th 854, (continued)

Whether defendant's Vehicle Code offense may be resentenced or redesignated as a misdemeanor turns on the proper construction of Proposition 47. When interpreting an initiative such as Proposition 47, "we apply the same principles governing statutory construction. We first consider the initiative's language, giving the words their ordinary meaning and construing this language in the context of the statute and initiative as a whole. If the language is not ambiguous, we presume the voters intended the meaning apparent from that language, and we may not add to the statute or rewrite it to conform to some assumed intent not apparent from that language. If the language is ambiguous, courts may consider ballot summaries and arguments in determining the voters' intent and understanding of a ballot measure. [Citation.]" (*People v. Superior Court* (*Pearson*) (2010) 48 Cal.4th 564, 571 (*Pearson*).)

Regarding the language of Proposition 47, one of the criteria for resentencing or redesignating a felony conviction as a misdemeanor is that the defendant "would have been guilty of a misdemeanor under [Proposition 47] had [Proposition 47] been in effect at the time of the offense." (§ 1170.18, subd. (a); *id.*, subd. (f).) In this case, defendant was convicted of violating Vehicle Code section 10851(a).[6] Proposition 47 did not amend Vehicle Code section 10851. Both before and after the enactment of Proposition 47 in 2014, Vehicle Code section 10851(a) has provided that unlawfully

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review granted Mar. 16, 2016, S232344; *People v. Solis* (2016) 245 Cal.App.4th 1099, review granted June 8, 2016, S234150; *People v. Johnston* (2016) 247 Cal.App.4th 252, review granted July 13, 2016, S235041; *People v. Sauceda* (2016) 3 Cal.App.5th 635, review granted Nov. 30, 2016, S237975 (*Sauceda*).)

[6] Vehicle Code section 10851(a) states: "Any person who drives or takes a vehicle not his or her own, without the consent of the owner thereof, and with intent either to permanently or temporarily deprive the owner thereof of his or her title to or possession of the vehicle, whether with or without intent to steal the vehicle . . . is guilty of a public offense and, upon conviction thereof, shall be punished by imprisonment in a county jail for not more than one year or pursuant to subdivision (h) of Section 1170 of the Penal Code or by a fine of not more than five thousand dollars ($5,000), or by both the fine and imprisonment."

driving or taking a vehicle is punishable as either a felony or a misdemeanor. Thus, a Vehicle Code section 10851(a) offense, when charged as a felony as in this case and as admitted by defendant's guilty plea, is still a felony after Proposition 47. Defendant therefore does not satisfy one of the criteria for resentencing or redesignation under Proposition 47. (§ 1170.18, subd. (a); *id.*, subd. (f).)

Defendant contends that Vehicle Code section 10851(a) defines a "theft" offense, such that it comes within the reference to "theft" in section 490.2, which was added by Proposition 47. Section 490.2 states: "Notwithstanding Section 487 or any other provision of law defining grand theft, obtaining any property by theft where the value of the money, labor, real or personal property taken does not exceed nine hundred fifty dollars ($950) shall be considered petty theft and shall be punished as a misdemeanor . . . ." (*Id*., subd. (a).) Section 490.2 "indicates . . . that after the passage of Proposition 47, 'obtaining any property by theft' constitutes petty theft if the stolen property is worth less than $950." (*People v. Romanowski* (2017) 2 Cal.5th 903, 908, fn. omitted.)

Contrary to defendant's argument, Vehicle Code section 10851 is not a "provision of law defining grand theft" (§ 490.2, subd. (a)). Further, the proscriptions in Vehicle Code section 10851(a) against driving or taking a vehicle are broader than the crime of theft of an automobile (§§ 484, 487, subd. (d)(1)). A theft is committed only if the defendant intends to " '*permanently* deprive' " the victim of his or her property. (*People v. Abilez* (2007) 41 Cal.4th 472, 510.) In contrast, a defendant may violate Vehicle Code section 10851(a) by taking a vehicle with the intent to permanently deprive the owner of possession, *or* by driving it with the intent only to " '*temporarily* deprive' " the owner of possession. (*People v. Garza* (2005) 35 Cal.4th 866, 876, italics added (*Garza*); see *id.* at p. 871.) In other words, Vehicle Code section 10851(a) " 'prohibits driving as separate and distinct from the act of taking.' " (*Garza*, *supra*, at p. 876.) Given that Vehicle Code section 10851(a) may be violated with or without a defendant

committing theft, and given that Vehicle Code section 10851(a) does not "defin[e] grand theft" or petty theft (§ 490.2, subd. (a)), we are not persuaded that the enactment of section 490.2, which simply changed the distinction between a grand theft and a petty theft, operates along with section 1170.18 to require the resentencing of a felony Vehicle Code section 10851(a) offense to misdemeanor petty theft.

The ballot materials for Proposition 47 support our construction that the electorate intended certain *grand thefts* to be resentenced to misdemeanor petty thefts, rather than providing for the resentencing of any crime that could have been charged as theft but was not so charged, such as some violations of Vehicle Code section 10851(a). The Legislative Analyst's analysis of Proposition 47, which was printed in the ballot materials, states the following regarding Proposition 47: "This measure reduces *certain* nonserious and nonviolent property and drug offenses from wobblers or felonies to misdmeanors. . . . *Specifically*, the measure reduces the penalties *for the following crimes*: [¶] [] ***Grand Theft.*** Under current law, theft of property worth $950 or less is often charged as petty theft, which is a misdemeanor or an infraction. However, such crimes can sometimes be *charged as grand theft*, which is generally a wobbler. For example, a wobbler charge can occur if the crime involves the *theft of certain property* (*such as cars*) . . . . This measure would *limit when theft* of property of $950 or less *can be charged as grand theft*. Specifically such crimes would *no longer be charged as grand theft* solely because of the type of property involved . . . ." (Voter Information Guide, Gen. Elec. (Nov. 4, 2014) analysis of Prop. 47 by Legis. Analyst, p. 35, some italics added (hereafter Guide).) Thus, the electorate must have understood and intended that the "[s]pecifically" listed crime of grand theft (*ibid*.), including grand theft auto (§ 487, subd. (d)(1)), would, upon passage of Proposition 47, be charged, sentenced, and/or redesignated as misdemeanor petty theft if the property was worth less than $950. As we have explained, Vehicle Code section 10851(a) is not a provision of law defining grand theft. Moreover, nothing in the ballot materials suggests that Proposition 47 was

intended to reclassify other crimes that could have been charged as grand theft auto, but were not so charged, such as some violations of Vehicle Code section 10851(a).

Defendant observes that section 666, which was amended by Proposition 47 and which provides the punishment for a defendant convicted of petty theft with a prior conviction, expressly refers to a conviction for "*auto theft* under Section 10851 of the Vehicle Code." (§ 666, subd. (a), italics added.) According to defendant, the electorate thus indicated its understanding that violations of Vehicle Code section 10851 are "a species of 'theft' offense[s]" that are included within the reference to "theft" in section 490.2, subdivision (a).

Defendant's argument is unpersuasive. Before and after Proposition 47, section 666 has referred to convictions for "petty theft, grand theft, . . . [*and*] auto theft under Section 10851 of the Vehicle Code." (§ 666, subd. (a); Stats. 2013, ch. 782, § 1.) We are not persuaded that the enactment of section 490.2, which simply changed the definition of what constitutes petty theft versus grand theft, means that the electorate intended a Vehicle Code section 10851 conviction to be resentenced or redesignated as a theft conviction under sections 484 and 490.2.

Defendant contends that construing section 490.2 to include a violation of Vehicle Code section 10851(a) would further the stated purposes of Proposition 47, which include maximizing alternatives to prison for "nonserious, nonviolent crime." (Guide, *supra*, text of Prop. 47, §§ 15, 2, pp. 74, 70.) We do not believe, however, in view of the text of section 490.2 and Vehicle Code section 10851(a), and the ballot materials for Proposition 47, that even a broad construction of Proposition 47 can support the conclusion that felony violations of Vehicle Code section 10851(a) may be resentenced to misdemeanor petty thefts under section 490.2. (See *Nickelsberg v. Workers' Comp. Appeals Bd.* (1991) 54 Cal.3d 288, 298 ["the rule of liberal construction . . . should not be used to defeat the overall statutory framework and fundamental rules of statutory construction"].)

Defendant contends that a violation of Vehicle Code section 10851(a) is a lesser included offense of grand theft auto (§ 487, subd. (d)(1)). She argues it would be anomalous to allow grand theft auto to be resentenced or redesignated to misdemeanor petty theft under section 490.2 if the value of the vehicle is less than $950, but not to allow the resentencing of a Vehicle Code section 10851(a) offense where the value of the vehicle is also less than $950.

As stated, Vehicle Code section 10851(a) proscribes a broader range of conduct than just the theft of a vehicle. Assuming a violation of Vehicle Code section 10851(a) is a lesser included offense of grand theft auto, a lesser included offense is not necessarily less serious than the greater offense. (See *People v. Wilkinson* (2004) 33 Cal.4th 821, 839 (*Wilkinson*).) For example, there may be a case in which a defendant intended only to temporarily deprive the victim of possession of the vehicle, but the victim was nevertheless affected to a greater degree, such as being unable to go to work and losing a job, than another victim whose *spare* vehicle was taken by a defendant who had the intent to permanently deprive the victim of the vehicle. (See *Sauceda, supra,* 3 Cal.App.5th at p. 651, review granted Nov. 30, 2016, S237975 [explaining that more severe punishment for a Vehicle Code § 10851 offense may "rationally be explained by a desire to seriously punish conduct which may affect vulnerable citizens, but which may not qualify as theft, such as temporarily taking a vehicle to prevent a victim from fleeing"].)

Alternatively, defendant argues that treating those convicted of a violation of Vehicle Code section 10851(a) more harshly than grand theft auto (§ 487, subd. (d)(1)), by allowing the latter group but not the former group to seek resentencing or redesignation as a misdemeanor when the value of the vehicle is less than $950, would violate federal and state equal protection principles.

" '[T]o succeed on [a] claim under the equal protection clause, [a defendant] first must show that the state has adopted a classification that affects two or more similarly situated groups in an unequal manner.' [Citations.] 'In considering whether state

legislation violates the Equal Protection Clause of the Fourteenth Amendment . . . we apply different levels of scrutiny to different types of classifications.' " (*Wilkinson*, *supra*, 33 Cal.4th at p. 836.) "A defendant . . . 'does not have a fundamental interest in a specific term of imprisonment or in the designation a particular crime receives.' [Citations.]" (*Id.* at p. 838.) Therefore, the rational basis test is applicable to an equal protection challenge involving an alleged sentencing disparity. (*Ibid*.)

As defendant acknowledges, she failed to establish that the value of the vehicle at issue was $950 or less. (See § 490.2, subd. (a).) As a result, defendant has not shown that she falls within either of the two groups she claims are similarly situated. (See *People v. Garcia* (1999) 21 Cal.4th 1, 11 [a defendant "lacks standing to assert the equal protection claims of hypothetical felons who may be treated more harshly"]; *People v. Superior Court* (*Manuel G.*) (2002) 104 Cal.App.4th 915, 934 [same]; *People v. Black* (1941) 45 Cal.App.2d 87, 96 [to bring a constitutional challenge, the law must injuriously affect the defendant's rights and the defendant must be "actually aggrieved by its operation"].)

Even assuming defendant falls within one of the two groups she identifies and even assuming those two groups are similarly situated, her equal protection claim fails. In *Wilkinson*, the defendant argued that his conviction for battery on a custodial officer violated equal protection, because the statutory scheme authorized felony punishment for the " 'lesser' " offense of battery on a custodial officer *without* injury, while the " 'greater' " offense of battery on a custodial officer *with* injury was a wobbler offense that allowed misdemeanor punishment. (*Wilkinson*, *supra*, 33 Cal.4th at p. 832.) In applying the rational basis test, the California Supreme Court rejected the defendant's challenge, explaining that "neither the existence of two identical criminal statutes prescribing different levels of punishments, nor the exercise of a prosecutor's discretion in charging under one such statute and not the other, violates equal protection principles. [Citation.]" (*Id.* at p. 838.)

Further, as we have explained, Vehicle Code section 10851(a) proscribes a broader range of conduct than grand theft auto and, depending on the facts of the offense, a violation of Vehicle Code section 10851(a) is not necessarily a less serious offense than grand theft auto. A Vehicle Code section 10851(a) offense may therefore merit greater punishment than grand theft auto. (See *Wilkinson, supra*, 33 Cal.4th at p. 839.) In this case, defendant fails to establish a violation of her equal protection rights.

Lastly, even assuming that a conviction under Vehicle Code section 10851(a) falls within the purview of section 490.2, or even assuming that equal protection principles require that Proposition 47 be construed to allow a Vehicle Code section 10851(a) offense to be resentenced as misdemeanor petty theft, defendant in this case failed to make a showing that she was entitled to relief.

In this regard, defendant acknowledges that "the record is silent as to the value of the 1995 Honda Accord." Defendant had the burden to demonstrate her eligibility for resentencing to a misdemeanor by making a prima facie showing that the value of the vehicle did not exceed $950. (§ 1170.18, subds. (a) & (f); *People v. Sherow* (2015) 239 Cal.App.4th 875, 877, 878, 879-880 [a defendant has the initial burden of establishing eligibility for resentencing under Proposition 47, including that the property value did not exceed $950]; *People v. Rivas-Colon* (2015) 241 Cal.App.4th 444, 449-450 [the defendant had the burden to prove the value of the property he took did not exceed $950]; *People v. Perkins* (2016) 244 Cal.App.4th 129, 133, 136-137 (*Perkins*) [a defendant has the burden to show eligibility, including that the value of the stolen property did not exceed $950], *Johnson, supra,* 1 Cal.App.5th at pp. 956, 959, 962-965, 969-970 [a defendant has the initial burden of establishing eligibility for Proposition 47 relief].) There is nothing in defendant's petition or in the record regarding the value of the vehicle. Defendant's petition was therefore properly denied. (See *Perkins*, *supra*, at p. 139 [trial court judgment may be affirmed on any correct basis presented by the record regardless of whether the trial court relied on it].)

In sum, we determine that defendant's felony conviction for violating Vehicle Code section 10851(a) is not eligible for resentencing or redesignation as a misdemeanor under Proposition 47.

B. Receiving a Stolen Vehicle

Defendant contends that the trial court erred in failing to grant her petition for redesignation of count 2 under Proposition 47 because section 1170.18 should be construed to apply to a felony conviction for violating section 496d where the value of the stolen motor vehicle was $950 or less.

Defendant acknowledges that Proposition 47 did not amend section 496d to provide that the offense of buying or receiving a stolen motor vehicle with a value of $950 or less is a misdemeanor. Despite this omission, defendant maintains that the voters intended that all theft related offenses be treated as misdemeanors where the value of the property is less than $950. Defendant points out that the "broader" misdemeanor offense of receiving stolen property with a value of $950 or less (§ 496, subd. (a)) was expressly reclassified as a misdemeanor by Proposition 47. Defendant also asserts that construing section 1170.18 to apply to the offense of buying or receiving a stolen motor vehicle with a value of $950 or less would serve "the voters' stated money saving goals" in enacting Proposition 47.

We will resolve the issue of whether the trial court erred in failing to redesignate count 2, buying or receiving a stolen motor vehicle in violation of section 496d, as a misdemeanor by applying the rules of statutory interpretation recounted above. (See *Pearson, supra*, 48 Cal.4th at p. 571.) In addition, we consider the maxim *expressio unius est exclusio alterius:* "The expression of some things in a statute necessarily means the exclusion of other things not expressed." (*Gikas v. Zolin* (1993) 6 Cal.4th 841, 852.) Under that maxim, where the Legislature expressly includes certain criminal offenses in a statute, the legislative intent was to exclude offenses that were not mentioned. (*People v.*

Sanchez (1997) 52 Cal.App.4th 997, 1001 (*Sanchez*); *People v. Walker* (2000) 85 Cal.App.4th 969, 973 [same]; *People v. Brun* (1989) 212 Cal.App.3d 951, 954 [same].)

Since certain theft related offenses (§§ 459.5, 473, 476a, 490.2, 496, & 666) are expressly included in section 1170.18, subdivisions (a) and (b), we determine that the intent of the voters was to exclude theft related offenses not mentioned in the statute from resentencing or redesignation under Proposition 47. (See, e.g., *Sanchez*, *supra*, 52 Cal.App.4th at p. 1001.) The offense of buying or receiving a stolen motor vehicle is set forth in section 496d, which is a statute not mentioned in section 1170.18, subdivisions (a) and (b). Therefore, under the maxim *expressio unius est exclusio alterius*, a conviction of violating section 496d is excluded from resentencing or redesignation under Proposition 47.

Moreover, to construe section 1170.18 as including section 496d would be inconsistent with our Supreme Court's instructions. We may not "add to the statute or rewrite it to conform to some assumed intent not apparent from that language." (*Pearson*, *supra*, 48 Cal.4th at p. 571.) And " '[w]henever possible, significance must be given to every word [in a statute] in pursuing the legislative purpose, and the court should avoid a construction that makes some words surplusage.' [Citation.]" (*People v. Rodriguez* (2012) 55 Cal.4th 1125, 1131.)

Defendant also contends that failing to grant a petition for redesignation of a section 496d conviction of buying or receiving a stolen motor vehicle with a value of $950 or less violates the constitutional right to equal protection. According to defendant, a person who is guilty of the offense of receiving a stolen vehicle (§ 496d) with a value of $950 or less is similarly situated to a person who is guilty of the offenses of theft of a vehicle with a value of $950 or less (§ 490.2) or receiving other property with a value of $950 or less (§ 496), which are eligible for resentencing or redesignation under section 1170.18. As explained above, however, defendant has not shown that she falls

within either of the two groups she claims are similarly situated because she failed to establish that the value of the vehicle at issue was $950 or less.

Even assuming defendant falls within one of the two groups she identifies and even assuming those two groups are similarly situated, her equal protection claim fails. As we explained in the previous section, "A defendant . . . 'does not have a fundamental interest in a specific term of imprisonment or in the designation a particular crime receives.' [Citations.]" (*Wilkinson, supra,* 33 Cal.4th at p. 838.) Therefore, the rational basis test is applicable to an equal protection challenge involving " 'an alleged sentencing disparity.' " (*Ibid*.) " 'This standard of rationality does not depend upon whether lawmakers ever actually articulated the purpose they sought to achieve. Nor must the underlying rationale be empirically substantiated. [Citation.] While the realities of the subject matter cannot be completely ignored [citation], a court may engage in " 'rational speculation' " as to the justifications for the legislative choice [citation]. It is immaterial for rational basis review "whether or not" any such speculation has "a foundation in the record." ' [Citation.]" (*Johnson v. Department of Justice* (2015) 60 Cal.4th 871, 881.) Therefore, "[t]o mount a successful rational basis challenge, a party must ' "negative every conceivable basis" ' that might support the disputed statutory disparity. [Citations.] If a plausible basis exists for the disparity, courts may not second-guess its ' "wisdom, fairness, or logic." ' [Citations.]" (*Ibid.*)

We find that there are several plausible reasons for the alleged disparity in excluding a conviction under section 496d from resentencing or redesignation under section 1170.18 where the value of the stolen motor vehicle was $950 or less. One reason is that the offense of buying or receiving a stolen motor vehicle may have greater consequences for the victims than other theft related offenses. The owners of motor vehicles are often dependent on their vehicles for transportation to work and school, and for obtaining the necessities of life, more so than other forms of stolen property.

Another reason is that stolen vehicles may be sold for parts in "chop shops," which may increase their worth. Targeting that type of criminal enterprise was in part the Legislature's intent in enacting section 496d, as indicated in the legislative history. The bill's author proposed that section 496d be added " 'to the Penal Code to encompass only motor vehicles related to the receiving of stolen property.' " (Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Assem. Bill No. 2390 (1997-1998 Reg. Sess.) as amended June 23, 1998.) Section 496d was described as " 'provid[ing] additional tools to law enforcement for utilization in combating vehicle theft and prosecuting vehicle thieves. Incarcerating vehicle thieves provides safer streets and saves Californians millions of dollars. These proposals target persons involved in the business of vehicle theft and would identify persons having prior felony convictions for the receiving of stolen vehicles for enhanced sentences.' " (Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Assem. Bill No. 2390 (1997-1998 Reg. Sess.) as amended June 23, 1998.)

A third plausible reason for the alleged disparity in excluding a conviction under section 496d from section 1170.18 concerns prosecutorial discretion in charging the offense of receiving a low value stolen motor vehicle as a felony under section 496d, rather than as a misdemeanor under section 496. Our Supreme Court has ruled that "numerous factors properly may enter into a prosecutor's decision to charge under one statute and not another, such as a defendant's background and the severity of the crime, and so long as there is no showing that a defendant 'has been singled out deliberately for prosecution on the basis of some invidious criterion,' that is, ' "one that is arbitrary and thus unjustified because it bears no rational relationship to legitimate law enforcement interests[,]" ' the defendant cannot make out an equal protection violation. [Citation.]" (*Wilkinson*, *supra*, 33 Cal.4th at pp. 838-839.)

Accordingly, we determine that the rational basis test is satisfied because there is a plausible basis for the alleged disparity between a conviction under section 496d for

buying or receiving a motor vehicle with a value of $950 or less, which is not eligible for redesignation under section 1170.18, and the eligible theft related convictions where the property had a value of $950 or less. We therefore find no merit in defendant's equal protection claim.

In sum, we determine that defendant's felony conviction for violating section 496d, subdivision (a) is not eligible for resentencing or redesignation as a misdemeanor under Proposition 47.

IV. DISPOSITION

The September 8, 2016 order is affirmed.

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BAMATTRE-MANOUKIAN, J.

WE CONCUR:

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ELIA, ACTING P.J.

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MIHARA, J.